Title:
The Law and Equal Representation of Citizens

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"THE LAW AND EQUAL REPRESENTATION OF CITIZENS"

By

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The idea that every citizen having to live subject to the law should have an equal and effective voice with every other citizen in what that law should be is not new to English polity. The ideas were first, I think, effectively expressed by the levellers during the Putney Army debates in the English Civil War and resulted finally in the brutal suppression by Cromwell of those who contended for the rights of citizens on the mere basis of citizenship rather than wealth, property or interest. But the plea of Colonel Rainborough of that time has ever since inspired men who were concerned to give some meaning to the word "democracy" to fight for effective representation of all citizens and he said: "The poorest he that is in England hath a right to live as the greatest he." The ideas of the levellers had, possibly through the influence of Tom Paine as much as anyone else, a great effect upon American citizens at the time of the drawing up of the Federal Constitution in the United States and there was a clash between those who wanted representation of interests and areas on the one hand and those who wanted the representation of citizens regardless of their interests or the areas in which they lived on the other. The history of this conflict was clearly traced in the majority judgement of the Supreme Court of the United States in the case of Wesberry against Sanders which is reported in the United States Supreme Court Reports, Lawyers' edition, 376 U.S. 11, L.ed. 2d., at Page 481. :

> "The question of how the legislature should be constituted precipitated the most bitter controversy of the Convention. One principle was uppermost in the minds of many delegates: that, no matter where he lived, each voter should have a voice equal to that of every other in electing members of Congress. In support of this principle, George Mason of Virginia "argued strongly for an election of the larger branch by the people. It was to be the grand depository of the democratic principle of the Government."
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> James Madison agreed, saying "If the power is not immediately derived from the people, in proportion to their numbers, we may make a paper confederacy, but that will be all." Repeatedly, delegates rose to make the same point: that it would be unfair, unjust and contrary to common sense to give a small number of people as many Senators or Representatives as were allowed to much larger groups - in short, as James Wilson of Pennsylvania put it, "equal numbers of people

ought to have an equal number of representatives . . ." and representatives "of different districts ought clearly to hold the same proportion to each other, as their respective constituents hold to each other."

Some delegates opposed election by the people. The sharpest objection arose out of the fear on the part of small States like Delaware that if population were to be the only basis of representation the populous States like Virginia would elect a large enough number of representatives to wield overwhelming power in the National Government. Arguing that the Convention had no authority to depart from the plan of the Articles of Confederation which gave each State an equal vote in the National Congress, William Paterson of New Jersey said, "If the sovereignty of the States is to be maintained, the Representatives must be drawn immediately from the States, not from the people; and we have no power to vary the idea of equal sovereignty." To this end he proposed a single legislative chamber in which each State, as in the Confederation, was to have an equal vote. A number of delegates supported this plan.

The delegates who wanted every man's vote to count alike were sharp in their criticism of giving each State, "regardless of population, the same voice in the National Legislature. Madison entreated the Convention "to renounce a principle which was confessedly unjust," and Rufus King of Massachusetts "was prepared for every event, rather than sit down under a Government founded in a vicious principle of representation and which must be as shortlived as it would be unjust."

The dispute came near ending the Convention without a Constitution. Both sides seemed for a time to be hopelessly obstinate. Some delegations threatened to withdraw from the Convention if they did not get their way. Seeing the controversy growing sharper and emotions rising, the wise and highly respected Benjamin Franklin arose and pleaded with the delegates on both sides to "part with some of their demands, in order that they may join in some accommodating proposition." At last those who supported representation of the people in both houses and those who supported it in neither were brought together, some expressing the fear that if they did not reconcile their differences, "some foreign sword will probably do the work for us." The deadlock was finally broken when a majority of the States agreed to what has been called the Great Compromise, based on a proposal which had been repeatedly advanced by Roger Sherman and other delegates from Connecticut. It provided on the one hand that each State, including little Delaware and Rhode Island, was to have two Senators. As a further guarantee that these Senators would be considered state emissaries, they were to be elected by the state legislatures, Art I, § 3, and it was specially provided in Article V that no State should

over be deprived of its equal representation in the Senate. The other side of the compromise was that, as provided in Art 1, § 2, members of the House of Representatives should be chosen "by the People of the several States", and should be "apportioned among the several States"... according to their respective Numbers." While those who wanted both Houses to represent the people had yielded on the Senate, they had not yielded on the House of Representatives. William Samuel Johnson, of Connecticut, had summed it up well: "In one branch the people, ought to be represented: in "the other, the States".

The debates at the Convention make at least one fact abundantly clear: that when the delegates agreed that the House should represent "people" they intended that in allocating Congressmen the number assigned to each State should be determined solely by the number of the States inhabitants. The Constitution embodied Edmund Randolph's proposal for a periodic census to ensure "fair representation of the people," an idea endorsed by Mason as assuring that "numbers of inhabitants" should always be the measure of representation in the House of Representatives. The Convention also overwhelmingly agreed to a resolution offered by Randolph to base future apportionment squarely on numbers and to delete any reference to wealth. And the delegates defeated a motion made by Elbridge Gerry to limit the number of representatives from newer western States so that it would never exceed the number from the original states.

It would defeat the principles solemnly embodied in the Great Compromise - equal representation in the House for equal numbers of people - for us to hold that within the States legislatures may draw the lines of congressional districts in such a way as to give some voters a greater voice in choosing a Congressman than others. The House of Representatives, the Convencion agreed, was to represent the people as individuals, and on a basis of complete equality for each voter. The delegates were quite aware of what Madison called the "vicious representation" in Great Britain whereby "Rotten Boroughs" with few inhabitants were represented in Parliament on or almost on a par with cities of greater population. Wilson urged that people must be represented as individuals, so that America would escape the evils of the English system under which one man could send two members to Parliament to represent the Borough of Old Sarum while London's million people sent but four. The delegates referred to Rotten Borough's apportionment in some of the State's legislatures as the kind of objectionable governmental action that the Constitution should not tolerate in the election of congressional representatives.

Madison in The Federalist described the system of division of States into congressional districts, the method which he and others assumed states probably would adopt: "The city of Philadelphia is supposed

to contain between fifty and sixty thousand souls. It will therefore form nearly two districts for the choice of Federal Representatives." "Numbers," he said, not only are a suitable way to represent wealth but in any event "are the only proper scale of representation." In the state conventions, speakers urging ratification of the Constitution emphasized the theme of equal representation in the House which had permeated the debates in Philadelphia. Charles Cotesworth Pinckney told the South Carolina Convention, "the House of Representatives will be elected immediately by the people, and represent them and their personal rights individually . . ." Speakers at the ratifying conventions emphasized that the House of Representatives was meant to be free of the malapportionment then existing in some of the state legislatures -- such as those of Connecticut, Rhode Island, and South Carolina - and argued that the power given Congress in Art I, § 4, was meant to be used to vindicate the people's right to equality of representation in the House. Congress' power, said John Steele at the North Carolina convention was not to be used to allow Congress to create rotten boroughs; in answer to another delegate's suggestion that Congress might use its power to favor people living near the seacoast, Steele said that Congress would "most probably lay the state off into districts," and if it made laws "inconsistent with the Constitution, independent judges will not uphold them, nor will the people obey them."

Soon after the Constitution was adopted, James Wilson of Pennsylvania, by then an Associate Justice of this Court, gave a series of lectures at Philadelphia in which, drawing on his experience as one of the most active members of the Constitutional Convention, he said:

"All elections ought to be equal. Elections are equal, when a given number of citizens, in one part of the state, choose as many representatives, as are chosen by the same number of citizens, in any other part of the state. In this manner, the proportion of the representatives and of the constituents will remain invariably the same."

It is in the light of such history that we must construe Art I, § 2, of the Constitution, which, carrying out the ideas of Madison and those of like views, provides that Representatives shall be chosen "by the People of the several States" and shall be "apportioned among the several States . . . according to their respective Numbers." It is not surprising that our Court has held that this Article gives persons qualified to vote a constitutional right to vote and to have their votes counted. United States v. Mosley, 238 US 383, 59 L ed 1355, 35 S Ct 904; Ex parte Yarbrough 110 US 651, 28 L ed 274, 4 S Ct 152. Not only can this right to vote not be denied outright, it cannot, consistently with Article I, be destroyed by alteration of ballots, see United States v Classic, 313 US 299, 85 L ed 1368, 61 S Ct 1031, or diluted by stuffing of the ballot box, see United States v Saylor, 322 US 385, 88 L ed 1341, 64 S Ct 1101. No right is more precious in a free country than that of having a voice in the

> election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right. In urging the people to adopt the Constitution, Madison said in No. 57 of The Federalist:
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> "Who are to be the electors of the Federal Representatives? Not the rich more than the poor; not the learned more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscure and unpropitious fortune. The electors are to be the great body of the people of the United States . . ."
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> Readers surely could have fairly taken this to mean, "one person, one vote." Cf Gray v Sanders, 372 US 368, 381, 9 L ed 821, 831, 83 S Ct 801.
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> While it may not be possible to draw congressional districts with mathematical precision, that is no excuse for ignoring our Constitution's plain objective of making equal representation for equal numbers of people the fundamental goal for the House of Representatives. That is the high standard of justice and common sense which the Founders set for us.

The United States Constitution provided in Article I Paragraph (2) that representatives be chosen by the people of the several States and, in fact, the actual quotation is "The House of Representatives shall be composed of members chosen every second year by the people of the several States and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature." Under the United States Constitution, the drawing of boundaries for congressional districts is in the hands of the State legislatures and it is significant that the United States Supreme Court has found that anything other than, in effect, substantially equal electoral districts in numbers of population, contravenes the provision of the Constitution that the Congress shall be chosen by the people of the several States, but the principle of equal electoral distributions has been extended by the majority of the United States Supreme Court to elections for both Houses of State legislatures in that country and this was done in the case of Reynolds against Sims, 377 U.S. Supreme Court, No. 3, at Page 533. While it is true that this was a case concerning the State of Alabama, and Alabama's own State Constitution included requirements for legislative representation based on population and for decennial reapportionment which had not taken place resulting in widely differing districts in population returning members to the

State legislature. The Court made it clear that the provisions of the 14th amendment of the Federal Constitution which required that : "Nor shall any State deny to any person within its jurisdiction, the equal protection of the laws", bind the States to provide equal representation - equal State legal representation - for all citizens of all places as well as of all races, and I think a few extracts from this judgement will make it clear what the view of the United States Supreme Court is on this matter :-

> In Gray v. Sanders, 372 U.S. 368, we held that the Georgia county unit system, applicable in statewide primary elections, was unconstitutional since it resulted in a dilution of the weight of the votes of certain Georgia voters merely because of where they resided. After indicating that the Fifteenth and Nineteenth Amendments prohibit a State from overweighting or diluting votes on the basis of race or sex, we stated:
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> > "How then can one person be given twice or ten times the voting power of another person in a statewide election merely because . . . he lives in the smallest rural county? Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote - whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be in that geographical unit. This is required by the Equal Protection Clause of the Fourteenth Amendment. The concept of "We the people" under the Constitution visualizes no preferred class of voters but equality among those who meet the basic qualifications. The idea that every voter is equal to every other voter in his State, when he casts his ballot in favor of one of several competing candidates, underlies many of our decisions."
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> Continuing, we stated that "there is no indication in the Constitution that homesite or occupation affords a permissible basis for distinguishing between qualified voters within the State." And, finally, we concluded: "The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing - one person, one vote."
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> We stated in Gray, however, that that case,
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> > "Unlike Baker v. Carr, ... does not involve a question of the degree to which the Equal Protection Clause of the Fourteenth Amendment limits the authority of a State Legislature in designing the geographical districts from which representatives are chosen either for the State

> Legislature or for the Federal House of Representatives . . . . Nor does it present the question, inherent in the bicameral form of our Federal Government, whether a State may have one house chosen without regard to population."

Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests. As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system. It could hardly be gainsaid that a constitutional claim had been asserted by an allegation that certain otherwise qualified voters had been entirely prohibited from voting for members of their state legislature. And, if a State should provide that the votes of citizens in one part of the State should be given two times, or five times, or 10 times the weight of votes of citizens in another part of the State, it could hardly be contended that the right to vote of those residing in the disfavored areas had not been effectively diluted. It would appear extraordinary to suggest that a State could be constitutionally permitted to enact a law providing that certain of the State's voters could vote two, five or 10 times for their legislative representatives, while voters living elsewhere could vote only once. And it is inconceivable that a state law to the effect that, in counting votes for legislators, the votes of citizens in one part of the State would be multiplied by two, five, or 10, while the votes of persons in another area would be counted only at face value, could be constitutionally sustainable. Of course, the effect of state legislative districting schemes which give the same number of representatives to unequal numbers of constituents is identical. Overweighting and overvaluation of the votes of those living here has the certain effect of dilution and undervaluation of the votes of those living there. The resulting discrimination against those individual voters living in disfavored areas is easily demonstrable mathematically. Their right to vote is simply not the same right to vote as that of those living in a favored part of the State. Two, five or 10 of them must vote before the effect of their voting is equivalent to that of their favored neighbor. Weighting the votes of citizens differently, by any method or means, merely because of where they happen to reside, hardly seems justifiable. One must be ever aware that the Constitution forbids "sophisticated as well as simple-minded modes of discrimination." Lane v. Wilson, 307 U.S. 268, 275, Gomillion v. Lightfoot, 364 U.S.339, 342. As we stated in Wesberry v. Sanders, supra:

> "We do not believe that the Framers of the Constitution intended to permit the same vote-diluting discrimination to be accomplished through the device of districts containing widely varied numbers of inhabitants. To say that a vote is worth more in one district than in another would . . . run counter to our fundamental ideas of democratic government . . . ."

State legislatures are, historically, the fountainhead of representative government in this country. A number of them have their roots in colonial times, and substantially antedate the creation of our Nation and our Federal Government. In fact, the first formal stirrings of American political independence are to be found, in large part, in the views and actions of several of the colonial legislative bodies. With the birth of our National Government, and the adoption and ratification of the Federal Constitution, state legislatures retained a most important place in our Nation's governmental structure. But representative government is in essence self-government through the medium of elected representatives of the people, and each and every citizen has an inalienable right to full and effective participation in the political processes of his State's legislative bodies. Most citizens can achieve this participation only as qualified voters through the election of legislators to represent them. Full and effective participation by all citizens in state government requires, therefore, that each citizen have an equally effective voice in the election of members of his state legislature. Modern and viable state government needs, and the Constitution demands, no less.

Logically, in a society ostensibly grounded on representative government, it would seem reasonable that a majority of the people of a State could elect a majority of that State's legislators. To conclude differently, and to sanction minority control of state legislative bodies, would appear to deny majority rights in a way that far surpasses any possible denial of minority rights that might otherwise be thought to result. Since legislatures are responsible for enacting laws by which all citizens are to be governed, they should be bodies which are collectively responsive to the popular will. And the concept of equal protection has been traditionally viewed as requiring the uniform treatment of persons standing in the same relation to the governmental action questioned or challenged. With respect to the allocation of legislative representation, all voters, as citizens of a State, stand in the same relation regardless of where they live. Any suggested criteria for the differentiation of citizens are insufficient to justify any discrimination, as to the weight of their votes, unless relevant to the permissible purposes of legislative apportionment. Since the achieving of fair and effective representation for all citizens is concededly the basic aim of legislative apportionment, we conclude that the Equal Protection Clause guarantees the opportunity for equal participation by all voters in the election of state legislators. Diluting the weight of votes because of place of residence impairs basic constitutional rights under the Fourteenth Amendment just as much as invidious discriminations based upon factors such as race, Brown v. Board of Education, 347 U.S. 483, or economic status, Griffin v. Illinois, 351 U.S. 12, Douglas v. California, 372 U.S. 353. Our constitutional system amply provides for the protection of minorities by means other than giving them majority control of state legislatures. And the democratic ideals of equality and majority rule, which have served this Nation so well in the past, are hardly of any less significance for the present and the future.

> We are told that the matter of apportioning representation in a state legislature is a complex and many-faceted one. We are advised that States can rationally consider factors other than population in apportioning legislative representation. We are admonished not to restrict the power of the States to impose differing views as to political philosophy on their citizens. We are cautioned about the dangers of entering into political thickets and mathematical quagmires. Our answer is this : a denial of constitutionally protected rights demands judicial protection; our oath and our office require no less of us. As stated in Gomillion v. Lightfoot, supra:
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> > "When a State exercises power wholly within the domain of state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right."
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> To the extent that a citizen's right to vote is debased, he is that much less a citizen. The fact that an individual lives here or there is not a legitimate reason for over-weighting or diluting the efficacy of his vote. The complexions of societies and civilizations change, often with amazing rapidity. A nation once primarily rural in character becomes predominantly urban. Representation schemes once fair and equitable become archaic and outdated. But the basic principle of representative government remains, and must remain, unchanged - the weight of a citizen's vote cannot be made to depend on where he lives. Population is, of necessity, the starting point for consideration and the controlling criterion for judgment in legislative apportionment controversies.
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> A citizen, a qualified voter, is no more nor no less so because he lives in the city or on the farm. This is the clear and strong command of our Constitution's Equal Protection Clause. This is an essential part of the concept of a government of laws and not men. This is at the heart of Lincoln's vision of "government of the people, by the people, (and) for the people." The Equal Protection Clause demands no less than substantially equal state legislative representation for all citizens, of all places as well as of all races.

Now it is clear that the American precedent for us then is that the Federal Court will construe in relation to Federal districting, provision in general terms that members are to be chosen by the people to mean that one person one vote and one vote one value must obtain in the drawing of district boundaries, and, secondly, that if in the Federal Constitution there is a provision relating to the general rights of citizens of a State that this binds the States and can affect their Constitutions in such a manner as to allow the granting of prerogative remedies by the Federal Court.

What then is our situation in Australia as compared with the American precedent?

As far as the Federal position is concerned, we have in our Commonwealth Constitution a provision by Section 24 that "The House of Representatives shall be composed of members directly chosen by the people of the Commonwealth....." and also "The number of members chosen in the several States shall be in proportion to the respective numbers of their people". These words are at least as strong for the contention adopted by the majority of the Supreme Court of the United States as those of the United States Constitution upon which ours was founded, and some might well regard them as being rather stronger.

However, it cannot be said that historically the same contending forces existedin our Federal Conventions as those which were so explicit in the Federalist Convention in the Unites States. It may, of course, be said that our Conventionists were adopting a view already clearly established from the Unites States in using very similar wording in our Constitution, but there was some debate in our conventions on this matter, principally emanating from delegates who either represented South Australia at the Convention or who had some connection with that State. Dr. Cockburn, for South Australia, moved (see the Convention Reports on the Commonwealth of Australia Bill, 2nd April, 1891, p.614) that the principle of manhood suffrage and also the principle of one man one vote be embodied in the Constitution. This was opposed by others, including some from South Australia, led by Mr. Thomas Playford, but,in supporting Dr. Cockburn, Sir George Grey (then Governor-General of New Zealand, and former Governor of South Australia) said -

> "I think there can be no doubt whatever that a clear case can be made out for the absolute necessity of giving only one vote to each man, and giving every man a right to vote on the question of returning representatives to the central parliament. If hon. gentlemen will reflect over the circumstances of the case, they will find that the original idea I believe in every one of these colonies was that there should only be one vote possessed by each man. That was the original conception. That undoubtedly was the conception in New Zealand."

Further on, Sir George said:-

> "We had a hardy set of people to deal with in South Australia, who knew precisely what their rights were, and who were determined to get them; and they succeeded in obtaining, I believe, a more liberal constitution than is possessed by any other part of Australasia. That was the result."

Another extract from Sir George's speech reads:-

> "I feel certain that if that is done then we shall feel it our duty to introduce a clause which will give to the states the power of starting with one man one vote. You will be told, hon. gentlemen, that this will be making an alteration in the constitution of the states, and taking from them a privilege. I say the only privilege taken away will be the right of the minority to oppress the majority. That certainly will be taken away; but if the people choose to have a constitution of that kind they can instantly restore it. It requires but one vote simply to say we shall have our old constitution back again; a single clause will do it, and they may go on then as they are going on now. But if the privilege for which we now contend be not granted, I feel sure that many years will in some cases elapse before that boon will be won and gained which now can be instantaneously given."

Sir John Downer, father of the present High Commissioner, also supported the principle, and Mr. G.S. Kingston said:-

> "We are surely justified in laying down some rules for their guidance, and when the proper time comes I shall be found recording my vote in favour of the amendment indicated by my colleague, Dr. Cockburn."

Mr. Kingston further stated:-

> "I have a strong belief in the propriety, when we are establishing a constituency for the return of members to a national assembly, of insisting on the right of each individual to one vote in virtue of his individuality, of recognising that right and conceding it to him on that ground, and denying it to him on all other grounds; and it is for that reason that I shall record my vote in favour of the amendment."

They were, however, unsuccessful in incorporating a provision ensuring that the right to vote for the Federal Parliament should clearly ensure that State laws did not prevent one man one vote and one vote one value obtaining, and no such provision exists in the Federal Constitution such as the equal protection clause of the United States Fourteenth Amendment, which would bind the States in relation to their own Constitutions.

As a result of this, we have seen . . the gross weighting of certain districts in such a way as to result in minorities electing Governments and majorities having no effective voice in either electing or rejecting them. Such things have occurred in the States of Australia, and the most recent distribution for the Federal Parliament at times contravenes the standards so far adopted by the United States Supreme Court in judging whether districting of congressional districts or State legislative districts is constitutionally proper.

We have also seen that the State of South Australia, the hardihood and democracy of whose citizens received such praise at Federal Conventions, has now become one of the most noted examples of provision of weighted voting and minority rule. The present

Opposition in South Australia received at the last State election a greater vote than the reigning Government in any State of Australia received at the election which put it there, and the present Government in South Australia took office with only 43 per cent of the vote, a situation which has been specifically ruled against by the Supreme Court of the United States in more than one case.

How far can citizens in Australia ensure the enshrining in Constitutions of provisions which will not allow a Government to take advantage of a temporary majority to alter the equal justice previously provided for citizens or to prevent the obtaining of that equal justice which all citizens ought to have?

In South Australia at the time of the founding of the State Constitution a unanimous vote of all elected members of the Legislative Council established to draw up the Constitution under the 1848 Act for the better government of the colonies provided for the basis of election for the Lower House to be manhood suffrage, and that representatives should be elected for districts substantially equal in numbers of population. The latter provision was not provided for directly in the Constitution as it was in the Alabama Constitution, but only provided for in the initial electoral distribution of districts, and this has allowed temporary conservative majorities to overthrow the original basis of the Constitution.

Most States of Australia (other than Tasmania) in the last 40 years have seen distributions heavily weighting votes for various areas, and there are no provisions in the Constitution of the States which prevent this from happening: indeed, in some cases the provisions of the Constitution ensure that it does happen. If there is a majority of legislators in power under the provisions of an existing Constitution and against whom the majority of citizens would have no effective remedy because the weight of their votes had been diminished in the way so roundly condemned by the United States Supreme Court, what remedy would these citizens then have?

Probably the only way to ensure that justice is done to citizens in Australia would be to amend the Federal Constitution of Australia to bind the States as the Federal Constitution of the United States has done. I have heard it suggested that this could not effectively be accomplished, and that a State Constitution could not be amended or have limitations imposed upon it by an amendment to the Federal Constitution since the States are themselves sovereign bodies. I believe that that view is quite mistaken and, notwithstanding Section 107

of the Federal Constitution, I see no reason why a Bill of Rights establishing the general rights of the citizens of the Commonwealth should not be incorporated into the Commonwealth of Australia Constitution, and if it were to be so incorporated I do not believe that it would be held not in any way to affect the operations of the States in their own Constitutions or their general activities. On the other hand, there are certain obstacles still in the way. As far as the existing provisions of the Commonwealth of Australia Constitution Act are concerned in relation to House of Representative district boundaries, the High Court has never shown itself to be as liberal in interpretation of words in the Constitution as has the Supreme Court of the United States in recent years. If, however, there was something more explicit in the Federal Constitution by way of a Bill of Rights, such as is being currently contended for, then, of course, a clear direction would be there, but there are still some obstacles in procedure to overcome.

The High Court in the cases of Hughes & Vale Pty. Limited v. Gair 90 C.L.R. at p.203, and in Clayton & Ors. v. Heffron & Ors. in 105 C.L.R. at p.214 has been reluctant to grant a remedy by way of injunction to prevent the presentation of a Bill for assent.

Perhaps it may be open in relation to an unconstitutional procedure in a State seeking to enact unequal distribution by a State Parliament to seek a declaration of right, but the question remains open as to how far such a declaration can be effectively enforced. I know that Western Australian lawyers will have their memories exercised on this particular score, but it certainly does seem that we are in some difficulty in Australia in providing the kind of remedies which have been availed of by citizens in the United States before the Supreme Court there. It is true that the view of the High Court concerning injunctions does not seem to have been followed by the Privy Council in a number of cases, and particularly in Moore v. the A.G. for the Irish Free State 1935 A .C. at p.484; but, of course, it is fashionable these days for the States as well as the Commonwealth fo talk about abolishing appeals to the Privy Council, a step which has, happily, not been taken in South Australia so far.

All this means that we in Australia have not got the same rights and protection enshrined in our Constitution that in some cases our forefathers designed to provide for us, and which, at any rate, are clearly enshrined in the Constitution of the United States of America. It is easy enough to say, "Well, that is the United States; what has it to do with us?", but in a literate country the principles of representative government do not change

with climate geography or distribution of population. Australia, just as the United States, is becoming overwhelmingly an urban civilisation. Sophisticated means of transport and communication are within the financial competence of any Parliament to provide to its members. There is no longer reason to plead for special weighting for sparsely populated areas if Parliaments are prepared to provide for their members facilities which will ensure that those members adequately represent the people who put them there. The way ahead to ensure simple and effective majority rule in the classic terms so clearly stated by Chief Justice Earl Warren may be a long and hard one for the Australian people, but it is no less worth while today than when it was said in such clear terms by Sir George Grey, Dr. Cockburn and other supporters in 1891, or when Colonel Rainborough made his plea to a dictator in the 17th century.
